

SENATE BILL No. 300

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-17-4-2.5; IC 32-26-5-2; IC 32-28; IC 32-29-7-9; IC 32-30-3.1-12; IC 32-33-11-4; IC 34-54; IC 34-55.

Synopsis: Appraisement and sheriff's sales. Removes the requirement that property sold at sheriff's sale be appraised.

Effective: July 1, 2016.

Boots

January 7, 2016, read first time and referred to Committee on Local Government.



Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 300

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 32-17-4-2.5, AS AMENDED BY P.L.94-2014,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 2.5. (a) Not later than forty-five (45) days after the
4 court has acquired jurisdiction over all the parties who have an interest
5 in the property that is the subject of the action, the court shall refer the
6 matter to mediation in accordance with the Indiana rules of alternative
7 dispute resolution.
8 (b) Except as provided in subsection (c), mediation of the case may
9 not begin until an appraiser files an appraisal report with the court.
10 (c) If each party waives the appraisal of the property, the case may
11 move to mediation without the filing of an appraisal report.
12 (d) In its order referring the matter for mediation, the court shall
13 advise the parties:
14 (1) that the real or personal property will be sold if the parties are
15 unable to reach an agreement not later than sixty (60) days after
16 the order is issued; and
17 (2) that the parties may agree upon a method of the sale of the



property, and if the parties do not agree upon a method of the sale of the property, the property may be sold at public auction or by the sheriff under subsection (g).

(e) Except if the parties agree to waive the appraisal of the property, not later than thirty (30) days after the court acquires jurisdiction under subsection (a), the court shall appoint a licensed real estate appraiser to appraise the property. The appraiser shall file the appraisal with the court.

(f) After receiving the appraisal, the court shall notify the parties of the appraised value of the property.

(g) If an agreed settlement is not reached in mediation or if the parties agree upon a method of sale, the court shall not later than thirty (30) days after the date the mediator files a report with the court that the mediation was not successful, or the parties file their agreement establishing the method of sale:

(1) order the property to be sold using the method that all the parties agree upon; or

(2) order the parties to select an auctioneer to sell the property. If the parties fail to select an auctioneer not later than thirty (30) days after the court's order to select an auctioneer, the court shall order the sheriff to sell the property in the same manner that property is sold at execution under IC 34-55-6. ~~The manner of appraising property described in this section satisfies the appraisal requirement under IC 34-55-4 or any other statute. However, if the parties waive appraisal of the property:~~

~~(A) the court shall order the sale to proceed without relief from valuation or appraisal under IC 34-55-4 or any other statute; and~~

~~(B) IC 34-55-4-1 does not apply to the sale.~~

(h) At the time the court orders the property to be sold, the court shall notify all lienholders and other persons with an interest in the lien or property, as identified in the title search or lien search required under IC 29-1-17-11 or section 2 of this chapter, of the sale. The property must be sold free and clear of all liens and special assessments except prescriptive easements, easements of record, and irrevocable licenses, with any sum secured by a lien or special assessment to be satisfied from the proceeds of the sale.

(i) The person who causes a title search to be conducted under section 2 of this chapter or a title or lien search to be conducted under IC 29-1-17-11 is entitled to reimbursement from the proceeds of the sale.

(j) Any person who has paid a tax or special assessment on the



property is entitled to pro rata reimbursement from the proceeds of the sale.

(k) Any person may advertise a sale under this section at the person's own expense, but is not entitled to reimbursement for these expenses.

(l) After deduction of the amounts described in subsections (h), (i), and (j) and the reasonable expenses of the sale, the court shall divide the proceeds of the sale among the remaining property owners in proportion to their ownership interest.

(m) If a party having an ownership interest in the property becomes the successful purchaser of the property either through agreed settlement or through auction, that person shall be given a full credit based on the percentage of the person's interest in the property before the purchase.

(n) As used in this subsection, "real estate professional" has the meaning set forth in IC 23-1.5-1-13.5. If the court has ordered that some or all of the property be sold at auction and, at any time before the property is sold at auction, all parties inform the court in writing that they:

- (1) wish to sell some or all of the property through a real estate professional;
- (2) have jointly selected a real estate professional; and
- (3) have agreed upon a listing price for the property;

the court shall rescind its order that the property, or a part of the property, be sold at auction and permit the property to be sold through a real estate professional. If some or all of the property has not been sold at the expiration of the listing agreement with the real estate professional, upon petition by any party, the court shall order the property to be sold at auction in accordance with subsection (h).

SECTION 2. IC 32-26-5-2, AS AMENDED BY P.L.201-2011, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) Upon receiving a complaint in writing signed by an owner of land adjoining a hedge or fence to which this chapter applies alleging that the owner of the fence has neglected to cut and trim the hedge or fence, the township trustee shall examine, within five (5) days after receiving the complaint, the hedge or other live fence.

(b) If the hedge or other live fence that is the subject of the complaint under subsection (a) has not been cut and trimmed, the township trustee shall give the owner of the hedge or other live fence written notice to cut and trim the hedge or other live fence and to remove the brush to the owner's property within thirty (30) days after



1 receiving the notice.

2 (c) The notice required under subsection (b) must be served by
3 reading the notice to the owner or by leaving a copy of the notice at the
4 owner's usual place of residence. If the owner of properties divided by
5 the hedge or other live fence is not a resident of the township where the
6 hedge or other live fence is located, the notice shall be served by
7 mailing a copy of the notice to the owner directed to the owner's last
8 known post office address.

9 (d) If the owner or the owner's agents or tenants do not cut and trim
10 the fences and remove the brush, the trustee shall, immediately after
11 the expiration of thirty (30) days, cause the hedge or other live fence to
12 be cut and trimmed and the brush removed to the owner's property.

13 (e) The trustee shall recover all expenses incurred under subsection
14 (d) by bringing a suit against the owner of the property on which the
15 hedge or live fence is situated before the circuit court or the superior
16 court of the county in which the hedge or other live fence is situated.
17 ~~Collection of the expenses and any judgment recovered shall be~~
18 ~~without relief from valuation or appraisal laws.~~

19 SECTION 3. IC 32-28-3-6 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. (a) A person may
21 enforce a lien by filing a complaint in the circuit or superior court of
22 the county where the real estate or property that is the subject of the
23 lien is situated. The complaint must be filed not later than one (1) year
24 after:

25 (1) the date the statement and notice of intention to hold a lien
26 was recorded under section 3 of this chapter; or

27 (2) subject to subsection (c), the expiration of the credit, if a
28 credit is given.

29 (b) Except as provided in subsection (c), if a lien is not enforced
30 within the time set forth in subsection (a), the lien is void.

31 (c) A credit does not extend the time for filing an action to enforce
32 the lien under subsection (a)(2) unless:

33 (1) the terms of the credit are in writing;

34 (2) the credit was executed by:

35 (A) the lienholder; and

36 (B) all owners of record; and

37 (3) the credit was recorded:

38 (A) in the same manner as the original statement and notice of
39 intention to hold a lien; and

40 (B) not later than one (1) year after the date the statement and
41 notice of intention to hold a lien was recorded.

42 (d) If the lien is foreclosed under this chapter, the court rendering



1 judgment shall order a sale to be made of the property subject to the
 2 lien. The officers making the sale shall sell the property ~~without any~~
 3 ~~relief from valuation or appraisal laws.~~ **in accordance with**
 4 **IC 34-55-6.**

5 SECTION 4. IC 32-28-10-2 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) A person
 7 employed and working in and about a strip mine has a lien on:

- 8 (1) the strip mine;
- 9 (2) all machinery and fixtures connected with the strip mine; and
- 10 (3) everything used in and about the strip mine;

11 for labor performed within a two (2) month period preceding the lien.
 12 Except as provided in subdivision (b), this lien is superior to and has
 13 priority over all other liens. As against each other, these liens have
 14 priority in the order in which they accrued.

15 (b) A state tax lien is superior to and has priority over a lien
 16 described in subsection (a).

17 (c) A person desiring to acquire an employee lien as described in
 18 subsection (a) shall file within sixty (60) days after the time the
 19 payment became due in the recorder's office of the county where the
 20 mine is situated a notice of intention to hold a lien upon property for
 21 the amount of the claim. The person filing a lien shall state in the lien
 22 notice the amount of the claim and the name of the coal works, if
 23 known. If the person filing the lien does not know the name of the coal
 24 works, the person shall include in the notice any other designation
 25 describing the location of the mine. The recorder shall immediately
 26 record the notice in the location used for recording mechanic's liens.
 27 The recorder shall receive a fee in accordance with IC 36-2-7-10. If the
 28 mine is located in more than one (1) county, the notice of intention to
 29 hold a lien may be filed in any county where any part of the mine is
 30 located.

31 (d) Suits brought to enforce a lien created under this section must be
 32 brought within one (1) year after the date of filing notice of the lien in
 33 the recorder's office. All judgments rendered on the foreclosure of the
 34 liens must include:

- 35 (1) the amount of the claim found to be due;
- 36 (2) the interest on the claim from the time due; and
- 37 (3) reasonable attorney's fees.

38 ~~The judgment shall be collected without relief from valuation,~~
 39 ~~appraisal, or state laws.~~

40 SECTION 5. IC 32-28-12-4 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) An employee
 42 having acquired a lien under this chapter may enforce the lien by filing



1 a complaint in the circuit or superior court in the county where the lien
 2 was acquired at any time within six (6) months after the date of
 3 acquiring the lien, or if a credit is given, after the date of the credit.

4 (b) The court rendering judgment for the claim shall declare the
 5 claim a lien upon the corporation's property and order the property sold
 6 to pay and satisfy the judgment and costs, as other lands are sold on
 7 execution or decree. ~~without relief from valuation or appraisement~~
 8 ~~laws.~~

9 (c) In an action brought under this section, the court shall make
 10 orders as to the application of the earnings of the corporation that are
 11 just and equitable, whether or not the the relief is asked for in the
 12 complaint.

13 SECTION 6. IC 32-28-14-8, AS AMENDED BY P.L.99-2011,
 14 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2016]: Sec. 8. (a) A homeowners association may enforce a
 16 homeowners association lien by filing a complaint in the circuit or
 17 superior court of the county where the real estate that is the subject of
 18 the lien is located. The complaint:

19 (1) may not be filed earlier than ninety (90) days, unless:

20 (A) another person files a foreclosure action on the property
 21 that is the subject of the lien; or

22 (B) a person files written notice to file an action to foreclose
 23 the lien under section 9(a)(1) of this chapter; and

24 (2) must be filed not later than five (5) years;
 25 after the date the statement and notice of intention to hold a lien was
 26 recorded under section 6 of this chapter.

27 (b) If a lien is not enforced within the time set forth in subsection
 28 (a), the lien is void.

29 (c) If a lien is foreclosed under this chapter, the court rendering
 30 judgment shall order a sale to be made of the real estate subject to the
 31 lien. ~~The officers making the sale shall sell the real estate without any~~
 32 ~~relief from valuation or appraisement laws.~~

33 SECTION 7. IC 32-29-7-9 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9. (a) A sheriff or an
 35 agent of the sheriff making a foreclosure sale under this chapter may
 36 not directly or indirectly purchase property sold by the sheriff or the
 37 sheriff's agent. If the purchaser of property sold on foreclosure fails to
 38 immediately pay the purchase money, the sheriff shall resell the
 39 property either on the same day without advertisement or on a
 40 subsequent day after again advertising in accordance with this chapter,
 41 as the judgment creditor directs. If the amount bid at the second sale
 42 does not equal the amount bid at the first sale, including the costs of the



second sale, the first purchaser shall be liable for:

- (1) the deficiency;
- (2) damages not exceeding ten percent (10%); and
- (3) interest and costs;

all of which may be recovered in a court of proper jurisdiction by the sheriff.

(b) If the property is sold, the sheriff shall pay the proceeds as provided in IC 32-30-10-14. Every sale made under this chapter ~~must be without relief from valuation or appraisement laws and is made~~ without ~~any~~ right of redemption.

SECTION 8. IC 32-30-3.1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 12. Any defendant in the main court action for possession of real property may file a complaint setting forth the sale and title under it and any other matter allowed under this chapter. The court proceedings must assess the values, damages, and other amounts of which assessment is required under section 3 of this chapter. If after the main court action the plaintiff has not paid the amount assessed by the court, the court shall set a reasonable time for the plaintiff to pay the defendant. If the plaintiff does not pay the amount within the time set by the court, the court shall order the land sold. ~~without relief from valuation or appraisement laws.~~ If the premises are sold, the defendant is entitled to receive from the proceeds of the sale the amount the defendant is due, with interest, and court costs. The plaintiff is entitled to the remainder of the proceeds of the sale.

SECTION 9. IC 32-33-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) A person that has a lien under this chapter may enforce the lien by filing the person's complaint in the circuit or superior court of the county in which the lien is filed, at any time within one (1) year after the notice is received for record under section 2(a) of this chapter by the recorder of the county.

(b) If the lien is not enforced within the time prescribed by this section, the lien is void. If the lien is enforced as provided in this chapter, the court rendering judgment shall order the sale to be made, and the officers making the sale shall sell the property ~~without relief whatever from valuation or appraisement laws.~~ **in accordance with IC 34-55-6.**

SECTION 10. IC 34-54-1-1 IS REPEALED [EFFECTIVE JULY 1, 2016]. ~~Sec. 1: When a judgment is to be executed without relief from appraisement laws, it shall be so ordered in the judgment.~~

SECTION 11. IC 34-54-1-2 IS REPEALED [EFFECTIVE JULY 1, 2016]. ~~Sec. 2: When a plaintiff has included in one (1) action demands~~



1 subject to the appraisement laws; with demands made payable without
 2 any relief from appraisement laws; the court may render separate
 3 judgments upon each demand.

4 SECTION 12. IC 34-54-1-3 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. A judgment
 6 recovered against a sheriff, constable, other public officer,
 7 administrator, executor, or other person or corporation, or the sureties
 8 of any or all of those persons:

9 (1) for money collected or received in a fiduciary capacity;

10 (2) for a breach of any official duty; or

11 (3) for money or other articles of value held in trust for another;
 12 is collectible without stay of execution. ~~or benefit of the valuation or~~
 13 ~~appraisement laws of Indiana.~~

14 SECTION 13. IC 34-54-6-2 IS REPEALED [EFFECTIVE JULY 1,
 15 2016]. Sec. 2: All judgments recovered upon bonds; written
 16 undertakings; or recognizances executed in any legal proceeding; civil
 17 or criminal; are collectible without relief from valuation or
 18 appraisements laws of the state of Indiana.

19 SECTION 14. IC 34-55-4-1 IS REPEALED [EFFECTIVE JULY 1,
 20 2016]. Sec. 1: Property shall not be sold on any execution or order of
 21 sale issued out of any court for less than two-thirds (2/3) of the
 22 appraised cash value of the property; exclusive of liens and
 23 encumbrances; except where otherwise provided by law.

24 SECTION 15. IC 34-55-4-2 IS REPEALED [EFFECTIVE JULY 1,
 25 2016]. Sec. 2: The sheriff, immediately upon levying an execution;
 26 shall proceed to ascertain the cash value of the property levied upon.

27 SECTION 16. IC 34-55-4-3 IS REPEALED [EFFECTIVE JULY 1,
 28 2016]. Sec. 3: (a) For the purpose of appraising the cash value of
 29 property:

30 (1) two (2) disinterested householders of the neighborhood where
 31 the levy is made shall be selected as appraisers; one (1) of whom
 32 shall be selected by each of the parties or their agents; or

33 (2) in the absence of either party or the party's agent; or upon the
 34 failure or refusal of either party after three (3) days notice by the
 35 sheriff; to make the selection; the sheriff shall proceed to select
 36 the appraisers.

37 (b) The appraisers shall immediately proceed to appraise the
 38 property according to its cash value at the time; deducting liens and
 39 encumbrances. In case of their disagreement as to the value; the sheriff
 40 shall select a like disinterested appraiser; and; with the disinterested
 41 appraiser's assistance; shall complete the valuation. The appraisement
 42 of any two (2) of them shall be considered the cash value.



1 SECTION 17. IC 34-55-4-4 IS REPEALED [EFFECTIVE JULY 1,
2 2016]. ~~Sec. 4: If an appraiser fails to act or to complete the valuation;~~
3 ~~another appraiser shall be chosen; as provided in this chapter.~~

4 SECTION 18. IC 34-55-4-5 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. It is not the duty of
6 the sheriff ~~or the appraisers~~ to ascertain the amount of liens and
7 encumbrances. However, either party may furnish the sheriff with a list
8 of liens and encumbrances, with the amount and nature of each.

9 SECTION 19. IC 34-55-4-6 IS REPEALED [EFFECTIVE JULY 1,
10 2016]. ~~Sec. 6: The sheriff shall furnish the appraisers a schedule of the~~
11 ~~property levied on; with the encumbrances made known to the sheriff.~~
12 ~~The appraisers shall proceed to fix and set down opposite to each tract;~~
13 ~~lot, or parcel of real estate; and of the several articles of personal~~
14 ~~property; the cash value; deducting liens and encumbrances. The~~
15 ~~appraisers shall return the schedule to the sheriff.~~

16 SECTION 20. IC 34-55-4-7 IS REPEALED [EFFECTIVE JULY 1,
17 2016]. Sec. 7: (a) The appraisers shall take and subscribe an oath;
18 annexed to the appraisalment; to the effect that:

19 (1) the property mentioned in the schedule is; to the best of their
20 judgment; worth the sums specified in the appraisalment; and

21 (2) the appraisalment is the fair cash value of the property at the
22 time; exclusive of liens and encumbrances.

23 (b) The sheriff may administer and attest the oath described in
24 subsection (a):

25 SECTION 21. IC 34-55-4-9 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 9. When any property
27 levied on remains unsold, the sheriff shall ~~when the sheriff returns the~~
28 ~~execution; return the appraisalment with the execution; return the~~
29 **execution**, stating in the sheriff's return the failure to sell and the cause
30 of the failure.

31 SECTION 22. IC 34-55-4-12 IS REPEALED [EFFECTIVE JULY
32 1, 2016]. ~~Sec. 12: Property conveyed by a debtor with intent to hinder;~~
33 ~~delay; or defraud creditors shall be sold without appraisalment.~~

34 SECTION 23. IC 34-55-5-1 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. (a) Any personal
36 property taken in execution may be returned to the execution defendant
37 by the sheriff, upon the delivery by the defendant to the sheriff of a
38 written undertaking described in subsection (b).

39 (b) The written undertaking must be:

40 (1) payable to the execution plaintiff, with sufficient surety to be
41 approved by the sheriff; and

42 (2) to the effect that the property shall be delivered to the sheriff



1 at a time and place named in the undertaking, to be sold:

2 (A) according to law; or

3 (B) for the payment to the sheriff of

4 (i) ~~the appraised value of the property; or~~

5 (ii) ~~if the property has not been appraised; the fair value of~~
6 ~~the property.~~

7 SECTION 24. IC 34-55-5-2 IS REPEALED [EFFECTIVE JULY 1,
8 2016]. Sec. 2: (a) ~~Before the sheriff delivers any part of the property to~~
9 ~~the defendant; the sheriff shall cause the property to be appraised in the~~
10 ~~manner prescribed by law when an appraisement of the property is~~
11 ~~required.~~

12 (b) ~~The defendant may sell or dispose of the property, paying the~~
13 ~~officer the full appraised value of the property.~~

14 SECTION 25. IC 34-55-6-6 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. Rents and profits
16 may be sold as other property. ~~the appraisers setting down the value of~~
17 ~~each year separately.~~

